

GEM Partnership Ltd Whistle Blowing Policy

1. Introduction

- 1.1 The Public Interest Disclosure Act 1998 recognises that workers have the right to “blow the whistle” and disclose certain information, e.g. the fraudulent activities of management, malpractice and/or concerns about health and safety.
- 1.2 The Act introduced specific rights for those who disclose information to a third party about an alleged wrong-doing in defined circumstances. There is no general right for all so-called whistle-blowers to receive special protection. To qualify, the following issues must be met:
 - 1.2.1 The disclosure in question must relate to one of the specified categories contained within the Act; and
 - 1.2.2 The disclosure must be made in one of the ways specified.
- 1.3 Protection under the Act applies to workers and the definition used is substantially wider than that used in other employment legislation. It includes not just employees and the common definition of workers, but also third-party contractors including limited company contractors whose work is controlled by the employer and those individuals working under training contracts but not the genuinely self-employed.

2. Policy Statement

- 2.1 This policy aims to enable and encourage staff to raise concerns within GEM Partnership. It recognises a worker’s legal rights to make a protected disclosure to certain prescribed persons or bodies under the Public Interest Disclosure Act 1998 and any subsequent legislation, as incorporated into the Employment Rights Act 1996.
- 2.2 GEM Partnership is committed to creating a safe, open and transparent workplace culture, where employees are encouraged to raise concerns at the earliest opportunity. GEM Partnership recognises that employees are often the first to realise that there may be something seriously wrong within an organisation.
- 2.3 It is important to GEM Partnership that any fraud, misconduct or wrongdoing by workers or officers of the organisation is reported and properly dealt with. GEM Partnership is committed to tackle malpractice and wrongdoing. Everyone should be aware of the importance of preventing and eliminating wrongdoing at work. If any cases of wrongdoing are upheld, they will be seriously dealt with.
- 2.4 GEM Partnership encourages staff to use internal mechanisms for reporting malpractice or illegal acts or omissions by employees or ex-employees. Employees will be listened to and serious concerns will be investigated.
- 2.5 GEM Partnership will provide regular refresher training to all managers enabling them to deal with concerns that are raised and is committed to treating all disclosures consistently and fairly.
- 2.6 GEM Partnership will ensure that all new employees, supervisors and managers will receive induction on the policy and will provide refresher training to all members of staff so that they are aware of whistleblowing law and know how to use this policy.
- 2.7 Adequate resources will be made available to fulfil the aims of this policy. The policy will be widely promoted, and copies will be freely available on SharePoint and GEM Partnership’s website.
- 2.8 This policy allows staff to take the matter further if they are dissatisfied with the management response and aims to reassure staff that they will be protected from harassment or victimisation from co-workers or from GEM Partnership for raising concerns.

3. Definitions and Scope

- 3.1 This policy applies to all staff including temporary, casual and agency staff, work experience, trainees and apprentices. Other individuals who work or have worked within the organisation, volunteers, the self-employed and contractors, are also encouraged to use it.

- 3.2 For the purpose of this policy, GEM Partnership recognises that whistleblowing is the passing on of information about wrongdoing at work. The whistleblower must reasonably believe that they are acting in the public interest.
- 3.3 The statutory categories for wrongdoing are:
- 3.3.1 a criminal offence (such as insurance fraud or illegal tax evasion)
 - 3.3.2 a breach of any legal obligation
 - 3.3.3 a miscarriage of justice
 - 3.3.4 endangering an individual's health and safety
 - 3.3.5 damage to the environment
 - 3.3.6 sexual harassment
 - 3.3.7 deliberate concealment of information about any of the above.
- 3.4 Examples of wrongdoing might include (but are not restricted to):
- 3.4.1 unsafe working conditions
 - 3.4.2 lack of, or poor, response to a reported safety incident
 - 3.4.3 inadequate induction or training for staff
 - 3.4.4 suspicions of fraud
 - 3.4.5 a bullying culture (across a team or organisation rather than individual instances of bullying)
 - 3.4.6 mis-use of public funding
 - 3.4.7 race, sexual, disability or other discrimination
 - 3.4.8 unethical conduct
 - 3.4.9 safeguarding concerns
- 3.5 It is not necessary for the member of staff to have proof that wrongdoing is being, has been, or is likely to be committed. A reasonable belief is sufficient to disclose the concern. The member of staff has no responsibility for investigating the wrongdoing. It is the organisation's responsibility to ensure that an investigation takes place.
- 3.6 A member of staff who makes such a protected disclosure has the right not to be dismissed, subjected to any other detriment, or victimised, because they have made a disclosure.
- 3.7 GEM Partnership recognises that any so-called 'gagging' or confidentiality clauses in settlement agreements or non-disclosure agreements with individuals do not prevent members of staff from making disclosures in the public interest and are void in such circumstances.
- 3.8 If the wrongdoing that the staff member wants to disclose is not included in the list above, advice may be sought from the designated officers (see section 4 below) or from a trade union representative on the use of the appropriate policy.
- 3.9 This policy is not for staff with concerns about their employment that affect only them – that type of concern is better suited to the Disciplinary and Grievance Procedure which can be found [GEM Disciplinary and Grievance Procedure](#)

4. Subject Matter of the Disclosure

- 4.1 There are limits on the subject matter that will qualify for protection. A qualifying disclosure means any disclosure of information, which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following:
- 4.1.1 That a criminal offence has been committed, is being committed or is likely to be committed; or
 - 4.1.2 That a person has failed, is failing or is likely to fail to comply with any legal obligation which he or she is subject; or
 - 4.1.3 That a miscarriage of justice has occurred, is occurring or is likely to occur; or
 - 4.1.4 That the health or safety of an individual has been, or is being or is likely to be endangered; or
 - 4.1.5 That the environment has been, is being or is likely to be damaged,
 - 4.1.6 That sexual harassment has occurred, is occurring or is likely to occur; or
 - 4.1.7 That information tending to show any massive failing within any one of the proceeding paragraphs has been, is being or is likely to be deliberately concealed.
- 4.2 The worker has to show that they have a reasonable belief that the information disclosed demonstrates one or more of the above criteria. However, there are two important exceptions where the disclosure will not qualify for protection and they are:

- 4.2.1 if the person making the disclosure commits an offence by making it, or
- 4.2.2 it is a matter in which a legal, professional privilege would apply, namely, correspondence between the employer and their lawyers regarding a specific case.
- 4.3 It is not sufficient for the worker to show that the circumstances give rise to a qualifying disclosure, the worker will also have to ensure that the proper procedures are adhered to.

5. Procedures for Disclosures

- 5.1 In order to qualify for the whistle-blowing protection, the worker must use one of the six specified ways to make the disclosure. The aim of the legislation is to encourage workers to disclose the information through appropriate internal channels first rather than going directly to an outside person such as a member of the media.
- 5.2 The six permitted ways of disclosure are as follows:
 - 5.2.1 Disclosure to an Employer or Other Responsible Person
 - 5.2.2 This method of disclosure will ensure that workers are protected in respect to disclosures made in good faith. Where the worker believes that the relevant failure relates solely or mainly to the conduct of a person other than the employer or to a matter for which that other person has responsibility, the disclosure should be made to that other person.
 - 5.2.3 In the context of temporary workers supplied by an employment business, it may well be appropriate for the temporary worker to raise the concern with the client in the first instance rather than the company
- 5.3 Disclosure to a Legal Adviser:
 - 5.3.1 This protects workers who disclose information in the course of obtaining legal advice.
- 5.4 Disclosure to a Minister of the Crown:
 - 5.4.1 This will only apply where the worker's employer is an individual appointed under any enactment by a Minister of the Crown or a body whose members are so appointed. Examples include the Utility Regulatory Bodies and NHS trusts, i.e. could apply to nurses, care staff and workers supplied to local authorities.
- 5.5 Disclosure to a Prescribed Person:
 - 5.5.1 Workers will qualify for protection when they make a disclosure in good faith to a person prescribed by an order made by the Secretary of State.
 - 5.5.2 The list of prescribed persons is: <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>
- 5.6 Disclosure in Other Cases:
 - 5.6.1 Disclosure in other cases apply where the worker reasonably believes that the information disclosed and any allegations contained within it are substantively true, does not make the disclosure for the purposes of personal gain and meets one of the specified conditions set out below, namely:
 - 5.6.1.1 That at the time he or she makes a disclosure, the worker reasonably believes that he or she will be subject to detriment by his or her employer if that worker makes a disclosure to his or her employer or to a prescribed person;
 - 5.6.1.2 That in the case where no person is prescribed in relation to the relevant circumstances, the worker reasonably believes that it is likely that the evidence relating to the relevant failure would be concealed or destroyed if he or she made the disclosure to the employer; or
 - 5.6.1.3 That the worker has previously made a disclosure of substantially the same information to the employer or a prescribed person. Further details are contained within the Act.
- 5.7 Disclosure of Exceptionally Serious Breaches
 - 5.7.1 The final type of protected disclosure is one which covers situations where the subject matter is serious enough to merit by-passing one of the other procedures. The relevant criteria set out above must be met together with the matter which must be exceptionally serious. It does not mean that people will be protected where they act unreasonably, for example, by going straight to the press where there would clearly have been other less damaging ways to resolve the matter.
 - 5.7.2 This would be particularly true where there was a whistle-blowing guidance which encourages the worker to raise the matter with the employer or another responsible body first.

5.8 Protection for the Worker

5.8.1 The protection given under the Public Interest Disclosure Act 1998 only applies in certain situations where the worker makes a protected disclosure to the bodies named in the Act. The protection applies to all workers without any restriction on age, however, it is limited and it is important that the worker follows the correct procedure or else they will be denied the protection. The protection, which includes financial compensation without the statutory cap applying in the case of protection against dismissal, further includes the right not to suffer a detriment as a consequence of making a protected disclosure.

6. Confidentiality

6.1 All concerns will be treated in confidence and every effort will be made not to reveal your identity if that is your wish. If disciplinary or other proceedings follow the investigation, it may not be possible to take action as a result of your disclosure without your help, so you may be asked to come forward as a witness. If you agree to this, you will be offered advice and support.

7. Anonymous Allegations

7.1 This Policy encourages you to put your name to your allegation whenever possible. If you do not tell us who you are it will be much more difficult for us to protect your position or to give you feedback. This policy is not ideally suited to concerns raised anonymously. Concerns expressed anonymously are much less powerful but they may be considered at the discretion of the Company. In exercising this discretion, the factors to be taken into account would include:

- 7.1.1 the seriousness of the issue raised
- 7.1.2 the credibility of the concern, and
- 7.1.3 the likelihood of confirming the allegation from other sources

8. Practical Issues

- 8.1 The company will take whistle-blowing and issues of malpractice seriously
- 8.2 It is important that matters are treated confidentially. If a worker is not happy with the way in which a matter has been addressed, he/she should be encouraged to raise that fact as a complaint rather than leaving the matter unresolved.
- 8.3 However, workers who make false allegations maliciously may be subject to the appropriate action.
- 8.4 If there is not a sufficiently senior person to deal with the complaint within the organisation, then external routes should be considered.

9. Safeguarding Concerns

- 9.1 This policy is designed to cover concerns that staff have about the conduct of individuals in a position of trust within an organisation which could be detrimental to the safety or wellbeing of young people and where staff, for whatever reason, feel unable to raise them under GEM Partnerships standard Safeguarding procedures around dealing with such allegations.
- 9.2 Issues would include;
 - 9.2.1 Bullying of staff
 - 9.2.2 Unprofessional behaviour
 - 9.2.3 Any form of abuse (physical, sexual, emotional or neglect)
 - 9.2.4 Name calling
 - 9.2.5 Personal contact with young people or vulnerable adults which is contrary to the organisations policies and code of conduct
 - 9.2.6 Any form of racial abuse
 - 9.2.7 Inappropriate sexualised behaviour
 - 9.2.8 Knowledge about an individual's personal circumstances which may indicate they could be a risk to young people or vulnerable adults or unsuitable to work with them
 - 9.2.9 Please be mindful that these are examples of concerns, and are not exhaustive.
- 9.3 GEM Partnership is committed to professional standards and to supporting staff. It is recognised that the decision to report a concern is difficult one to make. Harassment or victimisation will not be

tolerated and GEM will take appropriate action in order to protect the person raising the concern when they are acting in good faith.

- 9.4 All concerns will be treated in confidence, however, there may be a need for a whistle blower to give evidence for example if they have witnessed a crime or in regard to disciplinary procedures if this is the outcome.
- 9.5 This policy encourages staff to raise concerns identified in doing so as part of their professional role/responsibility. However, anonymous allegations will be investigated as thoroughly as possible.
- 9.6 If a member of staff raises a concern in good faith, which is not confirmed by an investigation, no action will be taken. However, if a concern is raised maliciously, disciplinary action may be taken.

10. How to raise a concern

- 10.1 Staff should normally raise their concerns with Julie Hunter, Designated Safeguarding Governance or Kelly Lee, Safeguarding Lead by completing Whistle Blowing Report Form either via the online link [Whistle Blowing Disclosure](#) or paper copy in Appendix 1
- 10.2 Any concerns regarding a young person (below the age of 18) regarding child protection will be referred to external agencies for investigation. If the concern is not of this nature there will be;
 - 10.2.1 Investigation by management
 - 10.2.2 Disciplinary process if appropriate
 - 10.2.3 Consideration of policies, processes and procedures if such issues arise from the investigation.
 - 10.2.4 Within 10-working days of concern being raised the refer will receive a written response from the person responsible which will;
 - 10.2.5 Acknowledge that the concern has been received
 - 10.2.6 Supply information on relevant support mechanisms
 - 10.2.7 Advise whether further investigation will take place; or
 - 10.2.8 Advise that no further action has taken place and why.

11. Harassment and victimisation

- 11.1 GEM Partnership understands that raising a concern can be difficult for staff, especially if they fear reprisal from those responsible for the malpractice. GEM Partnership will not tolerate harassment and victimisation of anyone raising a concern, and there should be no impact on the continued employment and opportunities for future promotion or training of anyone raising a concern. Any such behaviour is a serious breach of our values as an organisation and, if upheld following investigation, could result in disciplinary action potentially leading to dismissal.
- 11.2 GEM Partnership will not tolerate any attempt to bully anyone into not raising any such concern. Any such behaviour is a breach of our values as an organisation and, if upheld following investigation, could result in disciplinary action potentially leading to dismissal.
- 11.3 If a member of staff makes an allegation and they reasonably believe that the information disclosed and any allegations contained within it are substantively true, but the allegation is not confirmed by the investigation, no action will be taken against that member of staff. They will not be at risk of losing their job or suffering any form of reprisal as a result. Provided the member of staff is acting honestly, it does not matter if they are mistaken or if there is an innocent explanation for their concerns.
- 11.4 GEM Partnerships Anti-Harassment and Bullying Policy is on SharePoint [GEM Anti-Harassment & Bullying Policy](#)

12. Reporting a Concern to an External Body

- 12.1 This policy is intended to provide a route by which members of staff can raise concerns internally. However, if an employee is unhappy with the outcome of an investigation or if, for any reason they do not feel comfortable raising their concern internally, they are free to take the matter outside of the organisation to a prescribed person or body or to their Member of Parliament (MP).
- 12.2 The full list of prescribed persons and bodies can be found on the UK government website at <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>. They include:
 - 12.2.1 HM Revenue & Customs

- 12.2.2 the Comptroller and Auditor General
- 12.2.3 the Director of the Serious Fraud Office
- 12.2.4 the Charity Commission for England and Wales
- 12.2.5 the Information Commissioner
- 12.2.6 the Equality and Human Rights Commission
- 12.2.7 the Health and Safety Executive
- 12.2.8 the Care Quality Commission
- 12.2.9 the Environment Agency.

13. Other Support

- 13.1 Regulatory bodies such as Ofsted also have 'whistle blowing' hotlines. Ofsted's whistle blowing hotline is: 0300 123 3155. The email address is whistleblowing@ofsted.gov.uk
- 13.2 The Education and Skills Funding Agency (ESFA) is an executive agency of the Department for Education (DfE) responsible for funding education and skills providers in England.
 - 13.2.1 Information on making a whistleblowing disclosure through the ESFA:
<https://www.gov.uk/guidance/how-esfa-handles-whistleblowing-disclosures#how-esfa-handles-whistleblowing-disclosures>
 - 13.2.2 Address is Customer Service Team, Education and Skills Funding Agency, Cheylesmore House, Quinton Road, Coventry CV1 2WT
 - 13.2.3 Email complaints.esfa@education.gov.uk
- 13.3 Protect is a registered whistleblowing charity that aims to stop harm by encouraging safe whistleblowing. They provide a legal advice service we offering free expert and confidential advice on how best to raise a concern and protection as whistleblower.
 - 13.3.1 <https://protect-advice.org.uk>
 - 13.3.2 Protect Advice Line: whistle@protect-advice.org.uk
 - 13.3.3 Protect Advice Line: 020 3117 2520 (* option 1)
- 13.4 UK government advice on 'Whistleblowing for employees'
 - 13.4.1 www.gov.uk/whistleblowing
- 13.5 Acas guidance on 'Whistle-blowing – Public Interest Disclosure'
 - 13.5.1 <https://archive.acas.org.uk/index.aspx?articleid=1919>

14. Supporting Documentation

- 14.1 GEM Partnership Equality and Diversity Policy and Procedure
- 14.2 GEM Partnership Anti-Harassment & Bullying Policy
- 14.3 GEM Partnership Safeguarding Children and Vulnerable Adults Policy
- 14.4 GEM Partnership Bribery and Corruption Policy
- 14.5 GEM Partnership Complaints Policy, Procedure and Process
- 14.6 GEM Partnership Counter Fraud & Error Prevention Policy
- 14.7 GEM Partnership Malpractice and Maladministration Policy
- 14.8 GEM Partnership Safeguarding Risk Assessment

15. Appendix 1



Whistle Blowing Disclosure Form

Name:	
Job Title	
Location / Department	
Line Manager	
Is your concern about:	Nature & Summary
Financial malpractice, impropriety, or fraud	
Failure to comply with a legal obligation, regulatory requirements or within the laws.	
Serious danger to the health and safety of the individual or environment	
Criminal activity	
Sexual Harassment	
Academic or professional malpractice	
Miscarriage of justice	
Aiding/abetting or attempts to conceal any of the above	
Any other potentially unlawful behaviour which cannot be	

raised under an alternative
internal policy/procedure

Please set out the details of your concern with as much information as possible:

- Outline specifically what the concern is
- If the concern relates to a particular incident, explain who was involved, and when and where it happened
- Raise what you have seen, or are personally aware of, and where possible raise situations or incidents you have seen for yourself rather than what colleagues may have said.
- Give specific examples of wrongdoing of which you are personally aware. Try to be as clear as possible when explaining why you think this is wrongdoing

Declaration:

I confirm the above concerns have been raised in line with Whistle Blowing Policy

Signed:

Date: